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Protracted conflicts in the GUAM area and their implications for international peace, security and development

The situation in the occupied territories of Azerbaijan

Security Council
Seventy-second year

Letter dated 6 February 2017 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

The continuing aggression by Armenia against Azerbaijan has led to the temporary occupation of a significant part of Azerbaijan's territory, including the Nagorno-Karabakh region, the seven adjacent districts and some exclaves. The war has claimed the lives of tens of thousands of people, ruined cities and livelihoods in my country and resulted in the forcible expulsion of more than 1 million Azerbaijanis from their homes and properties.

Serious violations of international humanitarian law amounting to war crimes, crimes against humanity and acts of genocide were committed by the Armenian side in the course of the aggression. Such violations include, inter alia, indiscriminate attacks, the killing of civilians, the taking and holding of hostages, the mistreatment and summary execution of prisoners of war and hostages, sexual violence, the extensive destruction of inhabited areas and public and private property, pillaging and forced displacement.

This month marks the twenty-fifth anniversary of the atrocious crime committed against the civilians and defenders of the town of Khojaly, in the Nagorno-Karabakh region of Azerbaijan. What happened in Khojaly in February 1992 was the largest massacre in the conflict.

Before the war, 7,000 people lived in that town. From October 1991, the town was entirely surrounded by the Armenian forces and their affiliates. In the night of 25 to 26 February 1992, following massive artillery bombardments, the assault on the town began from various directions. As a result of the attack and capture of the town, hundreds of Azerbaijanis, including women, children and the elderly, were killed, wounded or taken hostage, while the town was razed to the ground.

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The following year, the Security Council adopted four resolutions on the conflict[1] condemning the occupation of the territories of Azerbaijan and reaffirming respect for its sovereignty and territorial integrity, the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory. In response to Armenia's territorial claims and actions, the Council reconfirmed that the Nagorno-Karabakh region is an integral part of Azerbaijan and demanded the immediate, complete and unconditional withdrawal of the occupying forces from all the occupied territories. A series of Security Council presidential statements adopted between 1992 and 1995 and documents of other international organizations are couched in the same terms.

In its resolutions and presidential statements, the Security Council further expressed grave concern about "the displacement of a large number of civilians in Azerbaijan and the serious humanitarian emergency in the region", condemned the "attacks on civilians and bombardments of the territory of the Azerbaijani Republic" and reaffirmed that the parties "are bound to comply with the principles and rules of international humanitarian law".

Other international organizations also strongly deplored the Armenian side for the use of military force and affirmed its direct responsibility for serious violations of international humanitarian law committed in the course of the war.

Thus, having considered the impact of the conflict on the civilian population in the area of combat operation, particularly the massacre in the town of Khojaly in February 1992, the Committee of Ministers of the Council of Europe in a declaration of 11 March 1992 expressed deep concern "about recent reports of indiscriminate killings and outrages", firmly condemned "the violence and attacks directed against the civilian populations in the Nagorno-Karabakh area of the Azerbaijan Republic" and underlined that "no solution imposed by force can be accepted by the international community".[2]

In 1993, the then Minister for Foreign Affairs of Sweden, Margaretha af Ugglas, in her capacity as Chairperson of the Council of the Conference on Security and Cooperation in Europe (CSCE), underlined that acquisition of territory by force can never be condoned or accepted as a basis for territorial claims[3] and expressed grave concern at the unacceptable scorched-earth policy practiced by the Armenian armed forces.[4]

In its resolution 1416 (2005) of 25 January 2005, the Parliamentary Assembly of the Council of Europe noted particularly that "considerable parts of the territory of Azerbaijan are still occupied by Armenian forces" and that "the military action, and the widespread ethnic hostilities which preceded it, led to large-scale ethnic expulsion and the creation of mono-ethnic areas which resemble the terrible concept of ethnic cleansing".

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[1] Security Council resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993).

[2] Declaration adopted by the Committee of Ministers on 11 March 1992 at the 471bis meeting of the Ministers' Deputies.

[3] Council of the Conference on Security and Cooperation in Europe, Communication No. 284, Prague, 26 October 1993.

[4] Council of the Conference on Security and Cooperation in Europe, Communication No. 301, Prague, 19 November 1993.

Referring to the reports of independent sources, the European Court of Human Rights pointed out that "at the time of the capture of Khojaly on the night of 25 to 26 February 1992 hundreds of civilians of Azerbaijani ethnic origin were reportedly killed, wounded or taken hostage, during their attempt to flee the captured town, by Armenian fighters attacking the town". The Court qualified atrocities committed in Khojaly as "acts of particular gravity which may amount to war crimes or crimes against humanity".[5]

There are abundant sources, consisting of the testimonies of witnesses to the tragedy, statements by authoritative international institutions and the findings of independent investigations by foreign journalists, human rights activists and authoritative international non-governmental organizations, which also contribute to corroborating the facts on the ground.[6]

Thus, based on the results of their inquiries, Human Rights Watch/Helsinki and the Memorial Human Rights Centre placed direct responsibility for the civilian deaths with the Armenian forces. In her letter dated 24 March 1997 addressed to the then Minister for Foreign Affairs of Armenia, the Executive Director of Human Rights Watch/Helsinki responded as follows to attempts by the Armenian propaganda to obfuscate this human rights organization with fabrications:

> Our research and that of the Memorial Human Rights Centre found that the retreating militia fled Khojaly along with some of the large groups of fleeing civilians. Our report noted that by remaining armed and in uniform, the Azerbaijani militia may be considered as combatants and thus endangered fleeing civilians, even if their intent had been to protect them. *Yet we place direct responsibility for the civilian deaths with Karabakh Armenian forces. Indeed, neither our report nor that of [the Centre] includes any evidence to support the argument that Azerbaijani forces obstructed the flight of, or fired on Azeri civilians.*[7]

Referring to a report by a Reuters correspondent in Aghdam, Azerbaijan, *The Independent* reported that "after a massacre, Azeris were burying scores of people who died when Armenians overran the town of Khojaly, the second-biggest Azeri settlement in the area. 'The world is turning its back on what's happening here. We are dying and you are just watching', one mourner shouted at a group of journalists".[8]

The Australian newspaper, *The Age*, reported that "the exact number of victims is still unclear, but there can be little doubt that Azeri civilians were massacred by the Armenian Army in the snowy mountains of Nagorno-Karabakh last week".[9]

Pascal Privat and Steve Le Vine of *Newsweek*, in their article entitled "The face of a massacre" reported as follows:

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[5] Judgment of the European Court of Human Rights, 22 April 2010, para. 87.

[6] For more information, see http://www.justiceforkhojaly.org/.

[7] Emphasis added. The full text of the letter is available from https://www.hrw.org/legacy/english/docs/1997/03/24/azerba16933.htm.

[8] *The Independent*, 29 February 1992.

[9] *The Age*, 6 March 1992.

> Azerbaijan was a charnel house again last week: a place of mourning refugees and dozens of mangled corpses dragged to a makeshift morgue behind the mosque. They were ordinary Azerbaijani men, women and children of Khojaly, a small village in war-torn Nagorno-Karabakh overrun by Armenian forces on 25-26 February. Many were killed at close range while trying to flee; some had their faces mutilated, others were scalped.[10]

Jill Smolowe of *Time* magazine in her article "Massacre in Khojaly" reported as follows:

> While the details are argued, this much is plain: something grim and unconscionable happened in the Azerbaijani town of Khojaly two weeks ago. So far, some 200 dead Azerbaijanis, many of them mutilated, have been transported out of the town tucked inside the Armenian-dominated enclave of Nagorno-Karabakh for burial in neighbouring Azerbaijan. The total number of deaths — the Azerbaijanis claim 1,324 civilians have been slaughtered, most of them women and children — is unknown.[11]

Furthermore, public statements by Armenian officials and the leaders of the subordinate separatist regime, as well as by other witnesses, are undoubtedly regarded as admission of liability. As the International Court of Justice made it clear, "statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavorable to the State represented by the person who made them. They may then be construed as a form of admission".[12]

It should be particularly noted that Khojaly was seized when the incumbent President Serzh Sargsyan of the Republic of Armenia served as head of the separatist regime's "self-defence forces committee" and, accordingly, his recollections constitute one of the most important sources of evidence. The following words by Mr. Sargsyan, at an interview when he was Armenia's Minister of Defense, leave no doubts as to the question of the perpetrator of the crime in Khojaly:

> Before Khojali, the Azerbaijanis thought that they were joking with us, they thought that the Armenians were people who could not raise their hand against the civilian population. We were able to break that [stereotype]. And that's what happened. And we should also take into account that amongst those boys were people who had fled from Baku and Sumgayit.[13]

Further, Mr. Sargsyan debunked the myth about the corridor allegedly left open by the assailants for the civilian population of Khojaly. Thus, answering the question on this issue, he readily concedes that "generally speaking, this was after Khojaly", since at the time "there was a certain amount of ethnic cleansing", as "it's impossible to do this any other way".

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[10] *Newsweek*, 16 March 1992.

[11] *Time*, 16 March 1992.

[12] See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*.

[13] See Thomas de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War* (New York and London, 2004).

Finally, in answer to the question as to whether he had any regrets about the deaths of thousands of people, Mr. Sargsyan said: "I have absolutely no regrets", since "such upheavals are necessary, even if thousands have to die".

These words from a person holding the highest political and military post in Armenia speak for themselves and disprove any denial of responsibility for the crimes committed in Khojaly and elsewhere in the occupied territories of Azerbaijan.

In his article, Jirair Libaridian, who was chief advisor to the first President of Armenia, Levon Ter-Petrossian, at the time of the Khojaly massacre, admitted that "it is very difficult for an Armenian to write about Khojali" because "something unacceptable did happen, something that involved killings and mutilation of Azeri civilians by Armenian forces in Karabakh".[14]

According to another Armenian author, Markar Melkonian, in his book dedicated to his brother, Monte Melkonian, who personally took part in the assault on Khojaly, the town "had been a strategic goal, but it had also been an act of revenge".[15] Melkonian particularly mentions the role of the fighters of the two Armenian military detachments "Arabo" and "Aramo" and describes in detail how they butchered the peaceful inhabitants of Khojaly. Thus, as he puts it, some inhabitants of the town had almost made it to safety, after fleeing for nearly six miles, when "[Armenian] soldiers had chased them down". The soldiers, in his words, "unsheathed the knives they had carried on their hips for so long, and began stabbing".[15]

The overall assessment of the causes and consequences of the war and all existing facts of mass killings in Khojaly make it absolutely clear that the crimes committed in that town were not an isolated or sporadic act, but part of Armenia's widespread and systematic policy and practice of carrying out atrocities.

The official investigation conducted in Azerbaijan found that the specific elements of the crime of genocide, as defined under international law, were present with regard to the attacks on civilians in Khojaly and that the necessary requirements had been met for the purpose of sustaining the genocide charges to that end.

The impunity still enjoyed by the perpetrators of the crimes committed in the course of the aggression of Armenia against Azerbaijan not only impedes progress in achieving the long-awaited peace and reconciliation between the two countries, but also aggravates the already difficult situation in the peace process and contributes to Armenia's growing sense of permissiveness. The examples below are illustrative in that regard.

First, in total disregard of the demands of the Security Council and in flagrant violation of international law, Armenia makes purposeful efforts towards consolidating the current status quo of the occupation, strengthening its military build-up in the seized territories, changing their demographic, cultural and physical

[14] Jirair Libaridian, "An Armenian Perspective on Khojali", 19 February 2014.

[15] See Markar Malkonian, *My Brother's Road: An American's Fateful Journey to Armenia* (London and New York, I. B. Tauris, 2005).

character and preventing the hundreds of thousands of forcibly displaced Azerbaijanis from returning to their homes and properties in those areas.[16]

Second, regular ceasefire violations and attacks on the towns and villages in Azerbaijan situated along the line of contact of the armed forces of Armenia and Azerbaijan and the border between the two States, have become more frequent and violent in recent times, resulting in the killing and injuring of Azerbaijani civilians residing near those areas.

Thus, starting in the early morning of 2 April 2016, the armed forces of Armenia increased fighting from their positions in the occupied territories, subjecting the armed forces of Azerbaijan along the line of contact and the adjacent densely populated areas under the control of Azerbaijan to intensive fire with heavy artillery and large-calibre weapons. As a result of Armenia's attacks and subsequent hostilities, 34 towns and villages in Azerbaijan were shelled, causing casualties among civilians and the servicemen of the armed forces of Azerbaijan as well as destroying or substantially damaging private and public property, including residences, schools and kindergartens.

On 10 April 2016, the International Committee of the Red Cross (ICRC) facilitated the handover, by both sides, of the bodies of those killed in action following the recent escalation.[17] The forensic medical examinations performed subsequently registered numerous signs of post-mortem mutilation of the bodies of Azerbaijani servicemen.[18]

In May 2016, the Office of the United Nations High Commissioner for Refugees conducted a mission to the affected areas in Azerbaijan. In its assessment report,[19] the Mission pointed out the following:

> Azerbaijani villages living along the [line of contact] have been coping with the regular violations of the ceasefire for the last 20 years. *Since the beginning of April 2016, however, the situation on the [line of contact] has changed fundamentally* due to the use of new and heavier types of military hardware inflicting worse damage and reaching further behind the frontlines.

The Mission also found that the intense fighting that flared up again on 27 to 28 April had had an even worse impact on settlements, particularly for the civilians living in the Goranboy, Tartar, Aghdam and Aghjebedi districts of Azerbaijan. The Mission further noted that "many of the civilians on [the line of contact] lost their livestock to the bombardments and their fields are now contaminated with [unexploded ordnance]" and that "many schools are damaged and closed in the area near the frontline in Goranboy, Tartar, Aghdam and Aghjebedi".

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[16] For more information, see A/70/1016-S/2016/711.

[17] See https://www.icrc.org/en/document/nagorno-karabakh-icrc-facilitates-retrieval-and-transfer-those-killed-action.

[18] For more information, see A/70/838-S/2016/363 and A/70/842-S/2016/370

[19] Office of the United Nations High Commissioner for Refugees, Azerbaijan, assessment mission report entitled "Populations affected by the violence on the line of contact in April 2016", 15 May 2016.

Third, since the beginning of the conflict, Armenia has extensively practiced the taking and holding of hostages and mistreatment and summary execution of prisoners of war and other captives.

Thus, at the beginning of January 2017, 3,867 citizens of Azerbaijan were registered as missing as a result of the conflict, including 3,123 servicemen and 744 civilians. Among the civilians, 62 are children (20 girls and 42 boys), 261 are women and 301 are elderly persons (including 152 women). It has been established that 873 of the 3,867 missing persons were either taken as prisoners of war or hostages, including 591 servicemen and 282 civilians, of whom 29 are children (7 girls and 22 boys), 99 are women and 112 are elderly persons (including 63 women).[20]

A clear list of the missing citizens of Azerbaijan has been submitted to Armenia through ICRC and is being regularly updated. However, Armenia has failed to account either properly or at all for the missing persons within its control and to conduct a prompt and effective investigation into the arguable claims that such persons have been taken into its custody and have not been seen since.

On 11 July 2014, the Armenian armed forces killed an Azerbaijani civilian, Hassan Hassanov, and captured two others, Dilgam Askarov and Shahbaz Guliyev, who were attempting to visit the graves of their relatives in the Kelbajar district of Azerbaijan. The Armenian side not only did not release these civilians, but also fabricated charges against them and unlawfully sentenced Mr. Askarov to life imprisonment and Mr. Guliyev to 22 years in jail, while the body of Mr. Hassanov was returned to Azerbaijan, with the facilitation of ICRC, after almost three months, on 2 October 2014.[21]

That was not the only instance of the Armenian side delaying the return of human remains and even trying to speculate and blackmail on such a sensitive issue. On 29 December 2016, Chingiz Gurbanov, a servicemen of the armed forces of the Republic of Azerbaijan, was killed in the fighting to halt an attempted incursion by an Armenian subversive group on the Armenian-Azerbaijani border. Immediately after the incident, ICRC offered its services, in its role as neutral intermediary, to facilitate the transfer of the soldier's body. Despite that and the insistent appeals of the international community, including the specific emphasis in their respective statements on the humanitarian nature of the issue,[22] the body was returned from Armenia to Azerbaijan only on the fortieth day, on 5 February 2017.

In conclusion, it is essential to state once again that the unlawful presence of the armed forces of Armenia in the occupied territories of Azerbaijan is the main cause of tensions and incidents that lead to human losses and sufferings in the conflict zone and the major impediment to the political settlement of the conflict.

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[20] See the website of the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, (http://www.human.gov.az/en/view-page/27/%C6%8FS%C4%B0R,%20G%C4%B0ROV%20V%C6%8F%20%C4 %B0TK%C4%B0N%20D%C3%9C%C5%9EM%C3%9C%C5%9EL%C6%8FR#.WJSZ01UrKUk).

[21] See the statement by Azerbaijan at the 7374th meeting of the Security Council, on 30 January 2015 (S/PV.7374).

[22] See, for example, the statements by the Co-Chairs of the Organization for Security and Cooperation in Europe (OSCE) Minsk Group of 9 January 2017 and by the Secretary General of the Council of Europe of 11 January 2017.

The only way to achieve a durable and lasting solution is to ensure the immediate, complete and unconditional withdrawal of the Armenian armed forces from the Nagorno-Karabakh region and from other occupied territories of Azerbaijan.

At the same time, the establishment of truth with respect to gross violations of international humanitarian and human rights law committed during the conflict, the provision of adequate and effective reparations to victims and the need for institutional actions to prevent the repetition of such violations are among the necessary prerequisites for sustainable peace and long-term stability. It is therefore important that peace efforts, including those being undertaken towards the resolution of the conflict between Armenia and Azerbaijan, never encourage, accept or tolerate the situations achieved by the unlawful use of force and other egregious violations of international law, such as war crimes, crimes against humanity, genocide and ethnic cleansing. The Republic of Azerbaijan will spare no effort towards achieving the political settlement of the conflict and ensuring peace and justice in the region.

I should be grateful if you would have the present letter circulated as a document of the General Assembly, under agenda items 32 and 37, and of the Security Council.

(*Signed*) Yashar **Aliyev**
Ambassador
Permanent Representative